

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>NATIONAL AMERICAN INSURANCE</b>	<b>)</b>	<b>CASE NO. 8:03CV281</b>
<b>COMPANY, an Oklahoma corporation,</b>	<b>)</b>	
	<b>)</b>	
<b>Plaintiff,</b>	<b>)</b>	
	<b>)</b>	
<b>vs.</b>	<b>)</b>	<b>MEMORANDUM AND ORDER ON</b>
<b>W&amp;G, INC., a Nebraska corporation,</b>	<b>)</b>	<b>W&amp;G, INC.'S MOTION FOR</b>
<b>REPUBLIC WESTERN INSURANCE</b>	<b>)</b>	<b>SUMMARY JUDGMENT ON</b>
<b>COMPANY, an Arizona corporation,</b>	<b>)</b>	<b>ATTORNEY FEES</b>
<b>COLBERG HARVESTING INC., a</b>	<b>)</b>	
<b>Kansas corporation, and COLBERG</b>	<b>)</b>	
<b>TRANSPORTATION INC., a Kansas</b>	<b>)</b>	
<b>corporation,</b>	<b>)</b>	
	<b>)</b>	
<b>Defendants.</b>	<b>)</b>	

In connection with its motion for summary judgment against National American Insurance Company (“NAICO”), Defendant W&G, Inc. (“W&G”) requested that the Court award a reasonable attorney fee and expenses pursuant to Nebraska Revised Statute §44-359. NAICO has informed the Court that, without waiving any issues for appeal, it has no evidence to offer in opposition to Defendant W&G’s motion for attorney fees.

The relevant statute states:

In all cases when the beneficiary or other person entitled thereto brings an action upon any type of insurance policy . . . the court, upon rendering judgment against such company . . . shall allow the plaintiff a reasonable sum as an attorney’s fee in addition to the amount of his or her recovery, to be taxed as part of the costs.

Neb. Rev. Stat. § 44-359 (Reissue 2004). The Nebraska Supreme Court has construed this statute to permit an award of attorney fees to an insured who prevails in a disputed coverage action brought by an insurer. See *State Farm Mut. Auto Ins. Co. v. Selders*, 202 N.W.2d 625, 626 (1972). At least one previous decision of this Court has recognized

*Selders* and observed that there are no obstacles to this Court awarding attorney fees and expenses pursuant to Neb. Rev. Stat. §44-359 to a prevailing insured in a declaratory judgment action. See *Paxton & Vierling Steel Co. v. Great American Ins. Co.*, 497 F.Supp. 573, 582 (D. Neb. 1980).

I have reviewed the Affidavit of Jefferson Downing and its attachments (Filing No. 66), which are unchallenged by the Plaintiff. I find that the request for attorney fees and expenses is reasonable. Accordingly, W&G's motion for summary judgment as to attorney fees is granted, and the Court concludes that NAICO shall pay to W&G \$10,211.63 in fees and expenses.

IT IS ORDERED:

The Motion for Summary Judgment filed by Defendant W&G, Inc. (Filing No. 36) as to the award of attorney's fees is granted.

Dated this 25<sup>th</sup> day of May, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge